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BANK & TRUST COMPANY, formerly known as  
10 and successor to Borel Private Bank & Trust  
Company  
11

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 In re:  
16 272 E. Santa Clara Grocery, LLC,  
17 Debtor.

CASE NO. 13-53491

CHAPTER 11

**OBJECTION TO EX PARTE  
APPLICATION FOR ORDER  
APPOINTING SPECIAL COUNSEL FOR  
DEBTOR**

20  
21 **TO THE HONORABLE STEPHEN L. JOHNSON, UNITED STATES BANKRUPTCY**  
22 **COURT JUDGE AND PARTIES IN INTEREST:**

23 Secured Creditor Boston Private Bank & Trust Company hereby files this objection to the  
24 Debtor's application (the "Application") to employ the Rossi, Hamerslough, Reishel & Chuck  
25 firm (the "Rossi Firm") as special litigation counsel to the Debtor. The objection is as follows:

26 **I. STANDARDS APPLICABLE TO THE APPLICATION**

27 Bankruptcy Code section 327(e) provides:

28 The trustee, with the court's approval, may employ, for a specified special purpose,

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1 other than to represent the trustee in conducting the case, an attorney that has  
2 represented the debtor, *if in the best interest of the estate*, and *if such attorney does*  
3 *not represent* or hold any interest adverse to the debtor or to the estate with  
4 respect to the matter on which such attorney is to be employed. (Emphasis  
5 supplied)

6 Bankruptcy Rule 2014(a) requires that an application for employment of counsel must  
7 “state the specific facts showing the necessity for the employment, the name of the person to be  
8 employed, the reasons for the selection, the professional services to be rendered, any proposed  
9 arrangement for compensation, and, to the best of the applicant’s knowledge, all of the person’s  
10 connections with the debtor, creditors, [and] any other party in interest....”

11 In employment matters, “the fundamental procedural requirement is that the applicant  
12 make full, candid, and complete disclosure of all of the professional’s connections with the  
13 debtor, creditors, or any other party in interest, their respective attorneys and accountants, the  
14 United States trustee, or any person employed in the office of the United States trustee.” *In re*  
15 *Kobra Properties*, 406 B.R. 396, 402 (Bankr. E.D.Cal. 2009) (citations omitted); *In re Park-*  
16 *Helena Corp.*, 63 F.3d 877, 880-882 (9th Cir. 1995). “Professionals must disclose all connections  
17 with the debtor . . . no matter how irrelevant or trivial those connections may seem.” *In re Triple*  
18 *Star Welding, Inc.*, 324 B.R. 778, 789 (9th Cir. BAP 2005), partially abrogated on other grounds  
19 in *Dye v Brown (In re AFI Holdings)* 530 F.3d 832 (9<sup>th</sup> Cir. 2008). The disclosure rules are not a  
20 matter of discretion. *Id.*

21 Under these standards, the Application fails and must be denied in its present form.

## 22 **II. DEFECTS IN THE APPLICATION**

23 Measured by these standards, the Application has at least the following deficiencies:

24 A. The Debtors schedules in this matter list the Rossi firm as one of its two, non-  
25 insider unsecured creditors in this case. [Dock. No. 1, at 14] No information is provided in the  
26 schedules about this claim or whether it relates to the matter for which the attorneys are proposed  
27 for employment. The Application should not be approved unless and until full and complete  
28 disclosure is made with respect to Rossi Firm’s unsecured claim, its relation to the matter of  
employment and proof that it has no relationship to the matters for which the Rossi Firm is now

1 to be engaged.

2 B. The Application represents that the Debtor has engaged the Rossi Firm in  
3 connection with certain litigation and attaches both a copy of the state court complaint and a  
4 written engagement agreement purportedly between the Debtor and the Rossi Firm. [Dock. No.  
5 26, Exhs. A and B]. However, the engagement agreement is not between the Debtor and the  
6 Rossi Firm. In fact, it is between the Rossi Firm and Andrew Lewis. [Dock. No. 26, Exh. B, p.  
7 16]. The Application contains no disclosure of what agreement, if any, the Debtor has with the  
8 Rossi Firm.

9 C. Mr. Lewis is identified in the state court complaint as one of the “Lenders” and  
10 “Assignors” who purportedly assigned claims which the Debtor purports to be prosecuting.  
11 [Dock. No. 26, Exh. A, ¶¶8 and 24.] According to the Debtor’s statement of affairs, the Debtor  
12 made payments of \$70,000 and \$52,000 in April and May 2013 to Mr. Lewis, who is listed as the  
13 largest unsecured creditor of the Debtor. [Dock. No. 1, p. 14] The Application provides no  
14 disclosure (i) with respect to the terms by which the claims were assigned to the Debtor, (ii) what  
15 the nature of the Rossi Firm’s on-going relationship is to Mr. Lewis with whom it signed an  
16 engagement agreement in February 2013, (iii) whether Mr. Lewis or any of the other alleged  
17 assignors continues to have an interest in the litigation under the terms of the assignment, (iv)  
18 what connection the prepetition payments to Mr. Lewis have to the claims which he purportedly  
19 assigned, or (v) what services the Rossi Firm performed in connection with the assignment, who

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1 it represented with respect to that assignment since its client at the time was apparently Mr. Lewis  
2 and whether the Debtor has independent representation in connection with the assignment. All of  
3 these “connections” must be disclosed.

4 WHEREFORE, Secured Creditor prays that the Application as presented be denied.

5 Dated: July 16, 2013

HOPKINS & CARLEY  
A Law Corporation

8 By: /s/ Stephen J. Kottmeier

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